

EXHIBIT C

IN THE UNITED STATES DISTRICT COURT
IN AND FOR THE DISTRICT OF DELAWARE

PRAGMATUS MOBILE, LLC,

Plaintiff,

v

AMAZON.COM INC.,

Defendant.

CIVIL ACTION

NO. 14-436-LPS

PRAGMATUS MOBILE, LLC,

Plaintiff,

v

ASUSTEK COMPUTER INC., et al.,

Defendants.

CIVIL ACTION

NO. 14-437-LPS

PRAGMATUS MOBILE, LLC,

Plaintiff,

v

DELL, INC.,

Defendant.

CIVIL ACTION

NO. 14-438-LPS

PRAGMATUS MOBILE, LLC,

Plaintiff,

v

HEWLETT-PACKARD COMPANY,

Defendant.

CIVIL ACTION

NO. 14-439-LPS

Wilmington, Delaware
Tuesday, October 14, 2014
Telephone Conference

BEFORE: HONORABLE **LEONARD P. STARK**, Chief Judge

1 PRAGMATUS MOBILE, LLC, :
: CIVIL ACTION
2 Plaintiff, :
v :
3 :
4 LENOVO HOLDING COMPANY INC., et al., :
: NO. 14-440-LPS
5 Defendants. :

6 PRAGMATUS MOBILE, LLC, :
: CIVIL ACTION
7 Plaintiff, :
v :
8 :
9 CASIO COMPUTER CO. LTD., et al., :
: NO. 14-478-LPS
Defendants. :

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Brian P. Gaffigan
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P R O C E E D I N G S

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(REPORTER'S NOTE: The following telephone

20

conference was held in chambers, beginning at 12:19 p.m.)

21

THE COURT: Good afternoon, everybody. This is

22

Judge Stark. Who is there, please?

23

MR. FARNAN: Good afternoon, Your Honor. Brian

24

Farnan on behalf of the plaintiff, and with me is Philip

25

Marsh from Agility IP Law.

1 THE COURT: Okay.

2 MR. BALICK: Your Honor, Steven Balick for Ashby
3 & Geddes for Amazon. And I'm joined by Roderick Thompson
4 from Farella Braun + Martel.

5 THE COURT: Okay.

6 MR. DORSNEY: Good afternoon, Your Honor. Ken
7 Dorsney for Asus from Morris James. With me on the line is
8 my co-counsel, Joshua Mazur from Turner Boyd.

9 THE COURT: Okay.

10 MR. FINEMAN: Good morning, Your Honor. Steve
11 Fineman at Richards Layton on behalf of Dell; and I also
12 have Roderick Thompson from Farella Braun + Martel with me.

13 THE COURT: Okay.

14 MR. HORWITZ: Your Honor, it's Rich Horwitz from
15 Potter Anderson on behalf of Lenovo by myself.

16 On behalf of HP, Curt Holbreich from K&L Gates.

17 And on behalf of NEC, Scott Simpson and Kate
18 Lieb from Sills Cummis.

19 THE COURT: Okay. Thank you.

20 Is that everybody?

21 MR. FARNAN: Yes, Your Honor.

22 THE COURT: I have my court reporter here with
23 me. For the record, we're here to discuss scheduling in
24 I believe it's seven related matters. They all involve
25 Pragmatus Mobile LLC as the plaintiff. The first one is

1 versus Amazon.com Inc., it's our Civil Action No.
2 14-436-LPS, and the other matters are 14-437, 14-438,
3 14-439, 14-440, and 14-478. So I am corrected. I believe
4 it's six matters and not seven.

5 I have reviewed the proposed scheduling order
6 and wanted a chance to speak to you all about primarily
7 what is in dispute there. So let me here first from the
8 plaintiff, please.

9 MR. MARSH: Good morning, Your Honor. Philip
10 marsh from Agility IP Law on behalf of Pragmatus Mobile LLC,
11 the plaintiff. How would you like to do this, Your Honor?
12 Would you like to do paragraph by paragraph or what disputes
13 remain, hearing from each side?

14 THE COURT: I want to hear from you on anything
15 you want to address first, and then I will turn to defendants.

16 MR. MARSH: Oh, okay.

17 THE COURT: So all of the issues that you want
18 to be heard on, you should address.

19 MR. MARSH: Okay. Absolutely. Thank you for
20 the clarification.

21 So, Your Honor, we've substantially reached
22 agreement on the scheduling order. There remains six
23 paragraphs where we have some disputed issues that we were
24 not able to work out and we could use the Court's guidance
25 on those issues.

1 The first issue is in paragraph 7(d) of the
2 proposed scheduling order. This relates to defendants'
3 initial invalidity contentions.

4 With respect to that issue, Your Honor, the
5 plaintiff -- well, first of all, we reached an agreement
6 as to the date by which those should be served, and that is
7 February 13th, 2015.

8 The dispute that remains is that we, the
9 plaintiff here argues that the defendants' invalidity
10 contentions should be a chart mapping reference to each of
11 the claim elements, and the defendants should provide any
12 reasons or motivations why one of ordinary skill would
13 combine any of the references in any combinations asserted
14 by the defendants.

15 It's our view, Your Honor, that that is the
16 only way we're going to know what the defendants actual
17 contentions are. I think in some cases we have seen just
18 kind of a laundry list of references thrown in, and that is
19 really not going to be sufficient, especially here where
20 Your Honor has requested or has ordered actually that we
21 make a preliminary reduction of asserted claims before the
22 claim construction hearing. That's something that the
23 defendants asked for and the Court agreed to in our last
24 hearing. In view of that, we really think it's necessary to
25 understand what the defendants' position is with respect to

1 their invalidity contentions.

2 It's interesting, Your Honor, when we talked
3 about this before, the parties, we actually had a call on
4 August 18th, 2014. I remember it well because it was during
5 a vacation that I had. During that call, I was told by the
6 defendants that really our proposal was their understanding
7 of how they needed to provide invalidity contentions anyway,
8 so I'm a little surprised when we weren't able to reach
9 agreement on this. But our view is that like what the
10 defendants have told me, that that really is kind of the
11 basic requirement for invalidity contentions.

12 The defendants here argue that the form
13 paragraphs in 7(d) and 7(c) from the Court's form scheduling
14 order, that those paragraphs are sufficient by themselves.
15 And they alternatively argue if our proposal is adopted by
16 the Court that the same specificity requirement should apply
17 in paragraph 7(c).

18 Let me just say that here, the Court has asked us
19 to change the form scheduling order, so sticking to the form
20 scheduling order in our view doesn't make a lot of sense.
21 What we're trying to address is a need that is caused by the
22 deviation from the form scheduling order that the defendants
23 requested and the Court agreed with and that is that initial
24 reduction of claim terms. So in order for us to make a
25 meaningful reduction, we really need to understand what their

1 contentions are in the initial invalidity contentions. So
2 that's really our position on that issue.

3 It's interesting. I think you may see, as we
4 discuss later in connection with paragraph 7(g), Your Honor
5 will see that the defendants want to keep up to 60 prior art
6 references. That may be revealing as to why they don't want
7 to chart these things. But our view is that that really is
8 something that we need to see.

9 Also, their comment about the same level of
10 specificity in paragraph 7(c) should be, that it should be
11 treated equally with whatever proposals are adopted here.
12 What we agree in general we'll find with equal treatment.
13 It doesn't make a lot of sense because paragraph 7(c) as a
14 form order actually already addresses this and says that we
15 need to have a claim chart and that we need to map the claim
16 terms to the accused products. So we're trying to address
17 what we view as a difference between those two paragraphs
18 and just make sure that we get an adequate disclosure from
19 the defendants so we're able to make our initial reduction
20 of claim terms.

21 So that is our position with respect to the
22 dispute in paragraph 7(b).

23 Moving on to the next dispute, unless Your Honor
24 has any questions. That would be paragraph 7(f).

25 In that paragraph, there are competing proposals

1 with regard to the defendants' final invalidity contentions.
2 Here again, the parties agree the final invalidity contentions
3 should be served by October 2nd of 2015.

4 The difference comes here that the plaintiff
5 argues that the final contentions should be within the scope
6 of the initial invalidity contentions, but we make room for
7 two exceptions. One would be any changes required because
8 of claim construction and two would be any changes required
9 because of new information not available to the defendants
10 at the time of the initial contention.

11 The reason why we argued for this, Your
12 Honor, is that we need to understand what the scope of the
13 defendants' theories are going to be. The date we have
14 agreed on, October 2nd, 2015, that is more than a month
15 after the parties have agreed that we should make a final
16 reduction on the asserted claim terms. That date, where we
17 have agreed to make our final reduction on asserted claim
18 terms, is August 28th.

19 What we are trying to avoid here through our
20 proposal is the situation where there is an initial set
21 of contentions and one theory. We then make our final
22 reduction based on that and based on claim construction.
23 Then the defendants come in and change their theory, and
24 then we're stuck with some claims based on the wrong theory.
25 So we're trying to avoid that situation. We really feel

1 like we need to understand that their final contentions are
2 going to be within the scope of those theories set forth in
3 their initial contentions with the exception of those two
4 situations that I outlined.

5 We think this is actually pretty standard. I
6 mean this is a situation where we feel like if they weren't
7 within the theory, we could potentially move the Court for
8 some relief. But we would like to build it in ahead of time
9 before any dispute down the road.

10 Let's see. Here again, the defendants argue
11 that the form paragraphs and the form scheduling order are
12 sufficient. Again, this is another situation where we're
13 actually trying to address something that the defendants
14 requested a change from the form scheduling order in the
15 form of another reduction, a final reduction of claim terms.
16 And we're trying to address that by asking for a slight
17 tweak of the form scheduling order with respect to what is
18 required in their final contentions.

19 So it doesn't make a lot of sense in our view to
20 say, hey, the form scheduling order is sufficient. We have
21 already deviated from that, and we're just trying to make
22 sure there is no dispute that arises from that deviation.

23 THE COURT: All right. You can go on to 7(g),
24 please.

25 MR. MARSH: Thank you. Your Honor, if I could

1 just mention one thing. If they're not required to keep
2 within those contentions, then we might suggest that we need
3 to flip that date for the final reduction until after their
4 final contentions. That might be another way to address that.

5 Paragraph 7(g), this relates to reductions of
6 asserted claims and prior art. Here again, we have agreement
7 as to the date. In this case, Your Honor, we argue that our
8 initial reduction of claim terms should be March 6th of 2016.
9 That is after the defendants' initial reduction of prior art
10 references.

11 The reason that we argued for that is we're more
12 than happy to go first on contentions. We're more than
13 happy to go first in the final reduction of asserted claims
14 and claim terms. But there is really no reason for us to
15 reduce the number of terms that we're asserting unless we
16 understand what their defenses are. So because we're going
17 first in every other instance, Your Honor, we would suggest
18 that it makes sense for the defendants here to go first with
19 respect to their initial reduction of prior art references,
20 to give us some guidance as to what their stronger defenses
21 are and what really makes sense to reduce. There is really no
22 reason for us to reduce claims other than that we're required
23 to do that, and we're just looking for some guidance here to
24 help us do that.

25 THE COURT: And remind me how many patents and

1 patent claims are there right now in this case?

2 MR. MARSH: Yes. So each claim, each of the
3 six cases has one patent in common, which is the '795
4 patent. There are two cases, the case against Dell and the
5 case against HP, that have an additional patent, the '124
6 patent. So with respect to the '795 patent, that patent has
7 33 claims in it. The '124 patent has 21 claims.

8 Our initial proposal, as you saw, was a
9 reduction of ten percent. We were seeking -- with respect,
10 let me address the '795 patent since that is common to every
11 case. Our thought was that we would go down to about 30
12 claims initially. The reason that we said ten percent is we
13 were just trying to come up with a rubric that would make a
14 common proposal make sense across all the cases since there
15 are different patents involved, but what we were thinking
16 with respect to the '795 patent is we would go down to about
17 30 claims.

18 Now, Your Honor, I saw that recently on
19 September 22nd, the Court had ordered, in the Enzo Life
20 Sciences case, had ordered an initial reduction by the
21 plaintiff down to no more than 25 asserted claims. Now,
22 that was actually after claim construction. But even though
23 we are before claim construction here, Your Honor, we would
24 be happy to go down to 25 asserted claims for the '795 patent.

25 And then for the '124 patent, in the two cases

1 where that applies, we could go down, you know, maybe 15
2 would make sense. We were thinking initially 18 to 19. But
3 if we went down to 15, that would make a total of 40 claims
4 in the two cases that involve the two patents. We think
5 that that is a reasonable proposal.

6 The defendants had proposed no more than 15
7 total claims and no more than ten per patent. In our view,
8 first of all, that proposal is a little ambiguous to us
9 because of the way that it applies across the different
10 cases, whether there is one patent or two. But it's also
11 quite a Draconian cut. What they're proposing is, because
12 they're saying no more than 10 claims per patent, I mean
13 that would reduce, that would cut 23 claims out of the '795
14 patent. That is a reduction of more than 70 percent. And
15 if we use the maximum of 10 claims for the '795 patent, then
16 we only have five remaining. That would be a reduction of
17 76 percent with respect to the '124 patent in cases where
18 that applies.

19 In our view, that is far too Draconian a cut
20 for the initial claim reduction. In fact, in our view,
21 their proposal for the initial reduction is actually in the
22 ballpark of what we could present at trial which is another
23 indicator that it's going too far.

24 With respect to prior art, they argue -- so we
25 have argued that the prior art references in the initial

1 reductions should be reduced to no more than 20 prior art
2 references. We think that is a lot of references. That is
3 pretty generous.

4 The defendants argue they should be limited to
5 no more than 60 references. And then also, on top of that,
6 they add this caveat that references that describe a single
7 system, or here they call it an instrumentality, shall count
8 as a single prior art reference. And that is no matter how
9 much prior art references are describing that single system.

10 In our view, that is really unworkable as well.
11 If we go by their proposal, I mean the total claims in both
12 patents, before any cuts, is, there is 33 in the '795 and 21
13 in the '124. So that is a total of 54 claims.

14 They're essentially saying that they would like
15 a new reference for every single claim and kind of not
16 taking into account even that there is a lot of repetition
17 and single references might apply across several claims. We
18 think that is just, it's not really a meaningful reduction
19 at all.

20 In addition, the proposal that as many
21 references as they want that applied to a single system
22 would count as one reference, in our view that is totally
23 unworkable. We have actually seen this in several recent
24 cases where defendants tend to cite a "system" and they say
25 that the system anticipates whichever patent claims they're

1 asserting it against, but then their system, their evidence
2 that the system supposedly anticipates is really a string
3 of six or seven prior art references, so really what they're
4 making is kind of an obviousness argument because they don't
5 have references to make this anticipation argument.

6 So we submit that that is not really, that is
7 not something we should have to deal with here. I mean I
8 think that they should be limited to a number of references
9 and make their position clear and not try to sneak in an
10 anticipation reference or an anticipation argument that
11 really is a dressed up obviousness argument, if that makes
12 sense. So that is that paragraph in our disputes.

13 Oh, we also think that they're -- no, that is it
14 for that paragraph.

15 Paragraph 7(h) deals with the final reduction
16 numbers for asserted claims in the prior art.

17 Here we have agreement as to the dates, although
18 as I mentioned before, the date of August 28th, 2015 for
19 our final reduction of claim terms, if we're not able to
20 get some specificity and maybe get them limited within the
21 theories presented in their initial contention other than
22 the two exceptions that I articulated, then we would suggest
23 that maybe that date needs to be pushed back, and it might
24 make sense to do that on October 2nd and have a simultaneous
25 exchange.

1 That said, what we're arguing for here in
2 connection with paragraph 7(h), we're arguing that the final
3 reduction of claims should be, that that should actually be
4 down to 15 claims per patent. We think that that is very
5 reasonable. And,

6 In fact, I noted that in that recent Enzo Life
7 Sciences case that I mentioned earlier that was issued by
8 the Court on September 22nd, the Court actually went with a
9 number of 15 per patent. I mean there is only one patent in
10 suit there, but the Court said that the final reduction of
11 asserted claims needed to be to more than 15. So we're
12 right in line with that.

13 The defendants here are proposing that the final
14 claims should be limited to no more than eight total, and no
15 more than five claims per patent. We think, again, that is
16 going way too far.

17 The limitation really hurts in the two patent
18 cases, you know, the cases that involve both patents because
19 in that scenario, if we're limited to five claims, which
20 again we think that that is unreasonable on its face by
21 itself, that in that case, then we would only have three
22 claims left over for the other patent and that is really
23 unworkable.

24 In our view, 15 is totally reasonable. It's
25 totally in line with what this Court has done even very

1 recently in the Enzo Life Sciences case, and we don't think
2 we should be limited beyond that.

3 Let's see. With respect to the prior art
4 references, we argue that the defendants should be limited
5 to no more than ten references on their final reduction.
6 They argued for 20, and then they say not more than five
7 for any single claim.

8 In our view, ten references is really even
9 beyond what they'll be able to realistically present at
10 trial. We believe this final reduction should really be
11 final, so it should be the number that they intend to
12 present at trial.

13 They propose 20 references, which there is no
14 way they're going to be able to present 20 references at
15 trial. And the five reference maximum per claim that they
16 propose is really unrealistic. I mean essentially what
17 they're contemplating is a five reference combination on a
18 claim, and I don't think I have ever seen that be successful
19 in recent history. In our view, that is an unreasonable
20 proposal.

21 With respect to paragraph 8(b), this paragraph
22 deals with the document production substantial completion
23 date. The disagreement here is just mainly on dates. We
24 propose April 16th, 2015. And they propose a couple months
25 later, on June 12th, 2015.

1 In our view, the April date is much more
2 appropriate here for two reasons: One, it's before the
3 interim status report which is on April 23rd. And it's
4 before the claim construction briefing which begins on
5 April 17th.

6 We feel like we should know the discovery
7 deficiencies, if any, before the interim status report. I
8 mean that is the whole point of the report is to address any
9 deficiencies. If we don't have a substantial completion by
10 that date, then it's going to be very difficult for us to
11 say exactly what those deficiencies are. We would like to
12 really solidify and understand where we stand before that
13 interim status report. Also, we believe we should have the
14 benefit of substantially all of defendants' production by
15 the time that we're drafting claim construction briefing.

16 Their proposed date actually comes after all of
17 the briefing would be completed for claim construction. And
18 we don't understand why they would want to delay it until
19 after the completion of claim construction briefing. In our
20 view, that is something that we really need before we get to
21 claim construction, and there is no real reason for the two
22 month delay. I don't know what they really gain from that.

23 THE COURT: Thank you.

24 MR. MARSH: Finally --

25 THE COURT: Yes. Before I turn it over to

1 defendants, because we're starting to run out of time, is
2 there a dispute on the number of claim terms that the Court
3 will construe? You have different proposals, but I couldn't
4 tell if you have a dispute.

5 MR. MARSH: Yes. I think the only dispute is
6 that they want to -- the main dispute is that they want to
7 say that there is going to be no less than ten terms unless
8 all parties agree. We don't think that is really appropriate.
9 I mean they want to kind of force it up to ten terms and
10 require that. Our view is that that was the maximum that
11 was set by the Court during the last hearing.

12 THE COURT: But if you don't agree that it
13 should be less than ten, then it would be ten; right?

14 MR. MARSH: Right. But I guess what I'm saying
15 is, in our view, there probably are fewer than ten, but I
16 think we should talk that out. We should have an opportunity
17 to land somewhere in the middle. If we think there are
18 three terms or five terms that should be in dispute, and
19 they feel like that there are ten and that is the maximum
20 set by the Court, the presumptive limit at least set by the
21 Court, then in our view we should be able to land somewhere
22 in between there because of the difference of opinion, and
23 we shouldn't default up to the presumptive maximum that the
24 Court set.

25 THE COURT: All right. Thank you. Is there one

1 person speaking for the defendants?

2 MR. THOMPSON: Yes, Your Honor. This is Robert
3 Thompson for both Dell and Amazon. Others may have comments
4 but I'm going to take the lead.

5 THE COURT: Okay. Go ahead.

6 MR. THOMPSON: Thank you, Your Honor.

7 With respect to the last point first, the
8 dispute is whether plaintiff could essentially have a veto
9 power over five claim terms. I think their position has
10 been plain and ordinary meaning, no construction necessary,
11 and that would effectively give them a chance to reduce it
12 to five instead of ten.

13 We're happy to say that they can choose five or
14 we can choose five, but we're concerned that the ten number
15 will get down to five pretty quickly if the plaintiff has
16 control over five. So that is why we have suggested the
17 language being that ten terms unless all parties agree to a
18 lesser number. Maybe we will all agree that we don't need
19 all ten, but unless we all agree, we think it is prudent to
20 keep all ten.

21 Your Honor, back to paragraph 7 where I think
22 most of the dispute is. That is the four subparagraphs.

23 To step back a moment, I think the real dispute
24 here is one of timing and order. Looking at the appendix to
25 the proposal, the proposed scheduling order, I think it

1 comes out most clearly here where we list in order the
2 dates proposed. And you will see, Your Honor, that the
3 plaintiff's proposal is that they would provide initial
4 claim chart on January 5 but would not have a reduction of
5 claim terms at that time. So I guess we can anticipate a
6 claim chart asserting every claim. That's 33 in one patent
7 and 21 on the other. And they're proposing that they not
8 have to reduce asserted claims until March 6th whereas you
9 can see 7(d) and 7(g), those are the defendants obligations,
10 the initial invalidity contentions and the initial reduction
11 of prior art references are February 13.

12 Your Honor, we believe it makes no sense for
13 defendants to be charting all invalidity contentions against
14 all claims in both patents when we know and we just heard
15 Mr. Marsh say they're going to be reducing their claim
16 terms. They're not going to be asserting all claim terms in
17 both patents. That is just a make-work exercise. We don't
18 believe it's appropriate.

19 By the same token, it makes even less sense for
20 us to have an initial reduction of prior art references
21 before we even know what claims are being asserted in their
22 initial reduction of asserted claims. We can't make a
23 reduction of prior art references if we're assuming that all
24 claims are being asserted against us as of February 13.

25 Therefore, we believe that both obligations, the

1 initial claim chart and the initial reduction of asserted
2 claims, should take place on the same day, January 5, and
3 then we would react to those with our invalidity contentions
4 and initial reduction of prior art references on February 13.

5 Indeed, that is the way the parties have agreed
6 that it should work for the final reduction. It certainly
7 makes sense to do it for the initial reduction as well.

8 With respect to the content of the initial
9 contentions, I think our point is simply that, I don't really
10 think there is a dispute here. These parties are experienced
11 counsel. We know what is acceptable in Delaware. We can be
12 guided by our local counsel as to both the initial claim
13 charts and the initial invalidity contentions. I don't think
14 there is going to be a dispute there.

15 What we're concerned about again is the
16 specificity that the plaintiff is suggesting in 7(d). If
17 you apply that kind of specificity to every claim in both
18 patents, which is what they're asking, that is a whole lot
19 of work that doesn't need to be done.

20 Again, if the Court is inclined to impose some
21 specificity, we do think, and I think Mr. Marsh was agreeing
22 that it should be a two-way street and specificity should
23 be required for both, we don't think that is a necessary
24 exercise but it should be a two way street if it's done.

25 THE COURT: Mr. Thompson, help me understand

1 where it would be too much work and unnecessary to do the
2 chart and disclose the motivation at 7(d).

3 MR. THOMPSON: It would only be too much work,
4 Your Honor, if we're charting against claims that would be
5 dropped momentarily. For example, the '124 patent only has
6 one independent claim but it has 21 claims in all, so that
7 is 20 dependent claims. If we're having to chart to find
8 references with respect to each of those, that is a big
9 burden, and then the motivation to combine the same way.

10 We don't mind the specificity provided it's
11 realistic, that is, against claims that are actually going
12 to be in dispute and not a make-work exercise.

13 THE COURT: You can go on.

14 MR. THOMPSON: Thank you, Your Honor.

15 With respect to the number of claim terms, this
16 is 7(g), ten percent, I think Mr. Marsh was suggesting he
17 might be able to go to 25 claim terms in the '795 patent
18 and -- sorry -- 15 claims, not terms, in the '124 patent.
19 The '124 patent, as I mentioned, has only one independent
20 claim.

21 First of all, if he is willing to make that
22 kind of reduction before we have to respond, that would
23 lessen our burden, but a ten percent reduction from 33 and
24 24 claims is really pretty meaningless.

25 With respect to the number of prior art

1 references, 60 admittedly is a large number, but right now,
2 we have the prospect of having to chart against all claims
3 in both patents, which is 54 claims, so that is why that
4 number is large for us. It certainly could be reduced if we
5 have any more manageable number of claims being asserted.

6 I think the number of claims being asserted and
7 the number of prior art references, that dispute is pretty
8 well straightforward. I will say that with respect to the
9 final reduction, I heard Mr. Marsh say that his argument
10 was we should, defendants should be limited to no more than
11 ten references because we couldn't present more than that
12 at trial.

13 Well, that is mixing apples and oranges. This
14 is the final contentions given, limiting the universe from
15 which we will select references to assert at trial.
16 Certainly, we're not necessarily going to be asserting all
17 the references that are in the final invalidity contentions
18 at trial. We make that judgments before trial. But that
19 doesn't speak to a reason for imposing an arbitrary even
20 more limiting number of references on us before trial.

21 So, Your Honor, that's the argument on 7(d), et
22 cetera. I really think it does come down, most importantly
23 for defendants, to timing, just to make sure an orderly
24 process proceeds with plaintiff reducing the number of
25 claims asserted and us reacting to that so that we're not

1 doing something for nothing and the process is proceeding
2 orderly.

3 With respect to the substantial completion
4 date for document production, to give Your Honor some
5 perspective, we all have received common requests for
6 production of documents recently, 92 in number. There is
7 going to be an effort I think to impose a very large burden
8 about document production, so we suggest that June 12th is
9 a more realistic date to comply with the demands that the
10 plaintiff is imposing. That is why we suggested April 16
11 would just be too quick for that.

12 And, Your Honor, I did touch on the reduction
13 of claim terms earlier. The one nuance that may not be
14 apparent is -- this is page 15 of the scheduling order.
15 There is a slight, and I underscore "slight," disagreement
16 about the form of the joint claim construction chart. And
17 it may be a little subtle, but the idea that is called out,
18 of course, is that the parties will exchange claim terms and
19 proposed constructions and then meet and confer and try to
20 agree on as much we can. And then for all terms remaining
21 in dispute, we'll prepare a joint claim construction chart
22 to be submitted to the Court.

23 Defendants suggest that in that chart we should
24 give to the Court all of the disputed claim terms and then
25 indicate which of those terms will be identified as the ten

1 that would be briefed.

2 Plaintiff just wants to cover the ten that will
3 be briefed and not cover the earlier or the other claim
4 terms that we would have discussed and debated and have a
5 disagreement about.

6 Your Honor indicated that it might be necessary
7 to go beyond ten claim terms at some point. We would just
8 like to make sure that the parties' efforts are reported in
9 a way that could be picked up and discussed later on, if
10 necessary.

11 THE COURT: All right. Thank you. One question
12 for you. Back on 7(h). With respect to the asserted prior
13 art references, this parenthetical you have in your proposal
14 of not more than five for any one asserted claim, what is
15 that accomplishing?

16 MR. THOMPSON: That's accomplishing -- I think
17 Mr. Marsh's concern was that we would be using the same
18 references multiple times against one claim, so that if --
19 I think that was really trying to address his concern that
20 there would be overkill on the number of obviousness references.
21 I don't think that is an important point either way, though.

22 THE COURT: All right. Does any other defendant
23 want to be heard?

24 MR. MAZUR: Yes, Your Honor. Sorry. This is
25 Joshua Mazur for the Asus defendants. I just wanted to add

1 briefly to Mr. Thompson's comments about specifically
2 paragraph 7(f).

3 Again, on 7(d), there is a specific note on
4 defendants' proposal that if initial specificity is required
5 for defendants' contentions, the same should apply to
6 plaintiff.

7 I would add that if you do adopt plaintiff's
8 proposal on 7(f) that these same requirements shall also
9 apply to plaintiff's charts and the scope of plaintiff's
10 infringement contentions, their final infringement
11 contentions.

12 The other point, Your Honor, was on paragraph
13 8(b) on the document production. Frankly, it's very hard
14 for us to know at this point how burdensome the document
15 gathering process is going to be. We don't receive
16 plaintiff's identification of the accused products until
17 this Friday.

18 If it's ten products, that will obviously be a
19 lot less burdensome and potentially would be achievable by
20 April 2015. If we are talking about a thousand products,
21 getting it, having that initial two months would make a huge
22 difference, Your Honor. Simply, we just don't know at this
23 point. Plaintiff hasn't set the scope of the case yet.

24 Those are my comments, Your Honor. Thank you.

25 THE COURT: Mr. Mazur, or maybe back to

1 Mr. Thompson, help me. Going back to the specificity. The
2 additional specificity the plaintiff is calling out is very
3 specific to invalidity. What additional particular specificity
4 would you be looking for me to require from them in terms of
5 infringement if I were to go with their language on the
6 invalidity contentions?

7 MR. MAZUR: Your Honor, this is Joshua Mazur again.

8 As to 7(f), they proposed that our final
9 invalidity contentions shall be limited to the scope of the
10 theories set forth in our initial invalidity contentions
11 with two exceptions that were identified earlier.

12 We would simply say or, sorry, Asus would simply
13 say, and I'm not sure if the other defendants join, that if
14 that holds for invalidity contentions, it also should hold
15 that for infringement contentions, the final infringement
16 contentions must be within the scope of the theories set
17 forth in the initial infringement contentions. Plaintiff
18 can't go off on a new theory that would reset the scope of
19 the case.

20 THE COURT: Okay. Thank you. Is there any
21 other defendant on that point or anything else?

22 MR. THOMPSON: Yes, Your Honor. This is
23 Roderick Thompson again. Just very quickly.

24 We had considered referring to local rules from
25 other courts but thought that was not appropriate. But the

1 standard local rules of several other courts for patents
2 will spell out specificity with respect to both the initial
3 and final infringement contentions of a similar scale to
4 what Mr. Marsh has proposed here.

5 THE COURT: Thank you. Is there any other
6 defendant?

7 All right. Thank you. Well, since we're nearly
8 out of time, I don't have time for any rebuttal here.

9 Let me give you my rulings and some dates. The
10 end result of this is I want to see a revised scheduling
11 order reflecting today's discussion and rulings, and let me
12 have it by Friday of this week, please.

13 I think the first dispute is at page 6, and it
14 has to do with these contentions.

15 I'm going to go with what the plaintiff has
16 proposed here as 7(d) and 7(f). And I am going to further
17 impose on the plaintiff that for their final infringement
18 contentions that they be within the scope of their earlier
19 contention unless they can show some good cause to deviate
20 from that.

21 I think in light of the scope of this case and
22 the number of parties and the fact that I am going to require
23 plaintiff to a couple of times reduce the number of asserted
24 claims, and I am going to require them to do that first, it
25 will be helpful to ensure, particularly since there is no

1 dispute substantively, but ensure in the order that this
2 specificity the plaintiff is looking for in terms of the
3 initial and final invalidity contentions is going to be
4 forthcoming from the defendants. It will help the case move
5 along according to the way in which we all envision that it
6 should. So that is 7(d) and 7(f).

7 Turning to 7(g). In terms of the date, we'll
8 adopt the defendants' dates. So, again, the plaintiff will
9 need to reduce the asserted claims first. And the number
10 will be no more than 20 asserted claims from the '795 patent
11 and no more than 10 from the '124 patent. I think that that
12 is reasonable in light of the number of claims and again in
13 light of the scope of the case and in light of the necessary
14 reducing and focusing of the case that will be necessary.

15 Then in terms of the prior art references, the
16 defendants will have to make an initial reduction down to
17 no more than 30 prior art references, and I will keep the
18 language that the defendants have proposed with respect to
19 prior art instrumentality. I think this is a reasonable
20 reduction being required by the Court and is all the more
21 reasonable in light of the number of claims that will be
22 left in the case at that point.

23 Moving on to 7(h), the final reduction. We'll
24 go with the defendants' language here but the numbers will
25 be different. The plaintiff can keep up to ten claims of

1 the '795 patent and up to five claims of the '124 patent at
2 that point in the case.

3 And then the prior art references, again, we'll
4 go with the defendants' language here, but it will be no
5 more than 15 references, so no more than a total of 15 prior
6 art references at that point.

7 Again, I see that all as a reasonable focusing
8 of the case as it proceeds.

9 In terms of document production, date for
10 substantial completion, I'm going to adopt the plaintiff's
11 proposal here of April 16, 2015. That is primarily because
12 I think if it can be done, it will be helpful for the
13 plaintiff, as it suggests, to have that information before
14 you report to the Court on your status report, but more
15 importantly before you really dive into the claim
16 construction briefing.

17 Now, it's a date for good faith substantial
18 completion. If it turns out that can't be done because the
19 case develops in a way that it gets too big, the number of
20 accused products, for instance, is bigger than anybody
21 realistically anticipates today, then obviously you all
22 need to meet and confer and perhaps you will work out an
23 agreement to extend that date. If you don't, then you will
24 be back to me and we'll talk about it in the context of a
25 concrete dispute.

1 Moving on, I think at page 15 is the next issue.
2 This is, at 15 and 16, about claim terms to be construed.

3 I'm going to adopt the defendants' language
4 at both 15 and 16. I understand about the joint claim
5 construction chart, and I think it will be beneficial for
6 any disputes that you have discussed and fall by the wayside
7 only because of my limit of ten at the initial Markman
8 hearing. Those should be memorialized somewhere just in
9 case we have to come back to them.

10 And the ten, I'm hopeful that it's less than
11 ten, but if either side in good faith thinks we have ten
12 terms, up to ten terms that are in dispute and are material
13 and need to be construed, then you are going to be able to
14 brief and argue the up to ten, and I will make a decision
15 once I am familiar with the merits of the arguments whether
16 I really need to construe all ten. And I think defendants'
17 language accomplishes that.

18 Some dates.

19 Paragraph 14. The hearing on claim construction
20 will be on August 25th, 2015. August 25, 2015, beginning at
21 9:00 a.m.

22 That's a little bit later than you all wanted.
23 We couldn't accommodate your request. If you want to
24 change the dates for briefing, and some of the other claim
25 construction dates, that is fine.

1 Then other dates, at page 18, the hearing on
2 case dispositive motions will begin on 11:00 a.m. on the
3 date you have, April 26th, 2016.

4 The trial sequencing conference will be July
5 29th, 2016 at 1:30.

6 The pretrial conference will be at 11:30 on
7 September 2nd. September 2, 2016.

8 Then trial will begin on September 12th.
9 September 12, 2016.

10 I'm late for another call, but if there are any
11 questions, I'll try my best. First from the plaintiff.

12 MR. MARSH: No questions. Is it same starting
13 time for the trial, Your Honor, 9:30 a.m.?

14 THE COURT: Yes. And any questions from
15 defendants?

16 MR. MARSH: No questions, Your Honor.

17 MR. THOMPSON: Nothing from defendants, Your
18 Honor.

19 THE COURT: Thank you all very much.

20 MR. MAZUR: Your Honor, I'm sorry. Joshua Mazur
21 also for the Asus defendants.

22 On the paragraph 7(f)/7(e) issue, you said for
23 good cause for the plaintiff. Should we adopt the same
24 "for good cause" language for both plaintiff and defendants
25 where those two examples would be examples of good cause?

1 THE COURT: I'm going to leave you to see if
2 you can work that out. I think that the two examples they
3 gave probably would be good cause. If you can talk them
4 into further examples or more general language, if you agree
5 on something, I'll be happy to sign it. If you don't, then
6 I'll see the dispute.

7 Is there anything else? Okay.

8 MR. MAZUR: No. Thank you, Your Honor.

9 MR. MARSH: Not from the plaintiff, Your Honor.
10 Thank you.

11 THE COURT: Good-bye.

12 (Telephone conference ends at 1:05 p.m.)
13

14 I hereby certify the foregoing is a true and accurate
15 transcript from my stenographic notes in the proceeding.

16 /s/ Brian P. Gaffigan
17 Official Court Reporter
18 U.S. District Court
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